

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LESLIE MCGINNIS,

Plaintiff,

Case No. 16-cv-13461

v.

Honorable Thomas L. Ludington

HUQ, et al,

Defendants.

ORDER DENYING MOTION TO AMEND

On September 23, 2016, Plaintiff Leslie McGinnis filed a complaint asserting deliberate indifference and excessive force claims against Defendants, staff members at the Wayne County Jail. ECF No. 1. Plaintiff is currently incarcerated and representing himself pro se. On January 3, 2017, this case was referred to Magistrate Judge David R. Grand. ECF No. 9. Defendants filed a motion for summary judgment on December 12, 2017. ECF No. 35. On April 30, 2018, Judge Grand issued a report recommending that the motion for summary judgment be granted and the complaint be dismissed. ECF No. 68.

On May 21, 2018, the Court received a letter from Plaintiff dated May 16, 2018. In the letter, Plaintiff requested a sixty day extension of the deadline to object to the report and recommendation. He explained that he “had problems accessing the library” and computer. ECF No. 70. The Court construed the letter as a request for an extension of time to object to the report and recommendation and granted it in part. The Court reasoned: “A thirty day extension will be sufficient for Plaintiff to evaluate the report and recommendation and determine whether any specific and palpable errors are contained within.” *Id.*

The next month, the Court received a letter from Plaintiff dated June 16, 2018. ECF No. 71. In it, he requested another extension to file his objections to Judge Grand's recommendation. *Id.* The request was denied because Plaintiff provided an insufficient explanation as to why he could not submit his objections within the previous 30-day extension. On June 28, 2018, Judge Grand's report was adopted and Plaintiff's claim was dismissed. ECF Nos. 72, 73.

On July 2, 2018, Plaintiff filed a motion to stay proceedings. ECF No. 75. On July 23, 2018, Plaintiff filed a motion to amend. ECF No. 77. Both motions were denied. ECF No. 82. Plaintiff then filed a notice of appeal challenging the Court's order. ECF No. 83. On December 10, 2018, Plaintiff filed a "Motion to Alter, Amend, or For Reconsideration of Judge Ludington's Order." ECF No. 86. The motion was denied because Plaintiff had already appealed this same issue to the Sixth Circuit for determination. ECF No. 90.

Plaintiff has now filed a motion to amend his original notice of appeal to include an appeal of the Court's denial of his most recent motion. ECF No. 91. However, as stated in the Court's previous order, the Court was divested of jurisdiction when Plaintiff filed his notice of appeal. *Griggs v. Provident Consumer Discount Co.*, 103 S. Ct. 400, 402 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."). Accordingly, Plaintiff's motion will be denied.

Additionally, Plaintiff filed an application to proceed without prepaying fees or costs. ECF No. 88. Because the Court has been divested of jurisdiction, Plaintiff's application will be transferred to the Sixth Circuit. *See Glick v. U.S. Civil Service Com'n*, 567 F. Supp. 1483, 1490 (N.D. Ill. 1983).

Accordingly, it is **ORDERED** that Plaintiff's motion to amend, ECF No. 91, is **DENIED**.

It is further **ORDERED** that the application to proceed in forma pauperis, ECF No. 88, is **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1631.

Dated: April 15, 2019

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and to **Leslie McGinnis** #139325, EARNEST C. BROOKS CORRECTIONAL FACILITY, 2500 S. SHERIDAN DRIVE, MUSKEGON HEIGHTS, MI 49444 by first class U.S. mail on April 15, 2019.

s/Kelly Winslow
KELLY WINSLOW, Case Manager